

Australian Sailing Appeal Decision

2023-05 RFBYC Gordon (AUS 222) vs Scoundrel (AUS 214)

Appeal by AUS222 sent to Australian Sailing on 3 March 2023, re-sent to Australian Sailing on 17 March 2023

Arising from an incident that occurred near the starting line near the start time of Race 4 of the WA International Dragon State Championships. The protest was heard by a protest committee from Royal Freshwater Bay Yacht Club and the written decision was published on 26 February 2023.

The following people have been appointed to the Appeal Panel for this appeal by Australian Sailing: Richard Slater (IU, IJ) Chair, David Brookes (IRO, ITD, NJ), Paul Pascoe (IJ, NRO), Damien Boldyrew (IJ, IU), Ben Fels (IJ, IU).

Appeal Validity

On 3 March 2023, AUS 222 sent the appeal into Australian Sailing via the online Appeal Application, found on the Australian Sailing Resources platform. Contemporaneous actions by the appellant, as well as evidence from independent parties support the fact that AUS 222 did 'send' the appeal.

AUS 222 followed up with Australian Sailing on 16 March 2023 and it was discovered by Australian Sailing that they did not receive the appeal. Australian Sailing informed AUS 222 of this on 17 March 2023. The appeal was re-sent promptly on the same day.

Australian Sailing have changed the process of receiving appeals to ensure a correct feedback loop exists to inform the appellant that their documents are received.

This panel is satisfied that AUS 222 'sent' the appeal and a copy of the protest committee's decision within the required timeframe detailed in Appendix R 2.1(a).

The Protest

The protest committee found the following facts:

1. *AUS 222 was sailing towards the start line close hauled on starboard with AUS 219 and other boats behind and to windward.*
2. *AUS 214 tacked onto starboard in front of AUS 222, which headed up slightly and made contact with AUS 214.*
3. *AUS 222 could have avoided contact by heading up higher.*
4. *Both boats circled around to avoid crossing the line early.*
5. *AUS 222 yelled protest and flew a flag.*
6. *Neither boat reported doing a penalty turn under sailing Instruction 14.2.*

The protest committee went on to conclude:

1. *AUS 214 broke rules 13 and 14.*
2. *AUS 222 broke rule 14.*

The protest committee decided the following:

AUS 214 and AUS 222 disqualified from race 4.

The Appeal summary

The grounds of the appeal from AUS 222 are as follows:

- 1. The protest committee has not considered and applied rule 43.1 (c) – where a right of way boat is exonerated for breaking rule 14 if contact does not cause damage or injury as there was only light contact and as such AUS-222 should not have been disqualified.*
- 2. AUS-222 did not break rule 14. The alteration of course and head up by AUS 222 was an attempt to avoid contact. AUS 222 was unable to head up harder due to very low boat speed and the proximity of the other boats to windward.*

Comments from the Protest Committee

In their comments to this appeal, the Protest Committee agreed with the appellant that they found no evidence to indicate there was any damage or injury. They admitted that they did not consider and apply rule 43.1(c) and stated: ‘...On behalf of the Protest Committee, I offer our apologies to Mr Lynn and to Australian Sailing for not applying rule 43.1(c) and exonerating AUS 222 for breaking rule 14’.

Appeal Panel discussion and conclusions

Ground 1

AUS 222 was the right of way boat in this incident. A right of way boat shall be exonerated for breaking rule 14 if the contact does not cause damage or injury (rule 43.1(c)).

The protest committee, in its comments regarding the appeal, confirmed that they found no evidence of damage or injury.

Ground 1 is upheld. The contact between AUS 214 and AUS 222 did not cause damage or injury therefore rule 43.1(c) states that AUS 222 is exonerated for any breach of rule 14 and rule 43.2 states that AUS 222 shall not be penalised for breaking rule 14.

Ground 2

The protest committee found as a fact that AUS 219 and other boats were behind and to windward. This ground is based on the proximity of other boats to windward so is partially an appeal against the facts found on an appeal. Under RRS 70.1(a) a party may appeal a protest committee’s decision or its procedures but not the facts found.

The protest committee found as a fact that ‘AUS 222 could have avoided contact by heading up higher.’ While this written statement is a conclusion, the protest committee may have found facts in the hearing regarding the actions taken to change course, including the time when these actions were taken. Normally an appeal on this ground would result in the protest decision being returned to the protest committee to find (and document) additional facts regarding the actions of AUS 222 to avoid, however, given the decision regarding ground 1, sending the protest back to find such facts will not change the outcome of this appeal decision.

Ground 2 is moot.

Appeal Panel decision

Appeal is upheld.

The protest committee's decision is changed to:

1. AUS 214 is disqualified from race 4
2. Since AUS 222 was the right of way boat and the contact did not cause damage or injury, it is exonerated under 43.1(c) for breaking rule 14.

The race committee will change the score of AUS 222 in race 4 to remove the DSQ penalty from AUS 222 scoring her in the finishing place in Race 4.